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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,904	06/27/2003	Gregory Kaplan		7542

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Gregory Kaplan  
42 Fowler Road  
Northbridge, MA 01534

EXAMINER
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ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/607,904	KAPLAN, GREGORY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gary E. Elkins	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20030627</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claim 19 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 21 June 2005.

### *Specification*

2. The abstract of the disclosure is objected to because the legal phraseology “means” was used in line 2 from the end. Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 112*

3. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 5 and 6, “the support member” (two occurrences) is unclear insofar as a plurality of different support members were previously defined in claim, i.e. is the main, left or right support member being referred to?

In claims 2, 3, 10 and 11, “ties” or “wire ties” are each a double inclusion of an element insofar as the wire ties were previously set forth in the claims, i.e. the phrases are reintroducing the previously defined ties into the claims.

Claim 5 contains the trademark/trade name “Cordura”. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or

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trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a material and, accordingly, the identification/description is indefinite.

In claim 18, "the single rod" lacks antecedent basis in the claims. It is assumed for the purpose of applying the prior art that claim 18 was intended to be dependent upon claim 17. However, correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 6, 10 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Benward. Benward discloses a holding device (fig. 3 or 4 emb) including a loop foldover 29, a main support member 27, a left vertical support member 26, 28 and a right vertical support member 26, 28 which define a slot therebetween. No distinction is seen between the claimed holder and that disclosed in Benward as a result of the claimed intended use to hold wire ties, rebar ties (cl. 2), double loop rebar ties (cl. 3) or at least approximately 75 wire ties (cl. 10), i.e. the holder of Benward is considered capable of holding wire ties of like size to the holder and in any quantity pursuant to the relative sizes of the wire ties and the compartments.

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6. Claims 1-3, 6, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Vanish. Vanish discloses a holding device including a loop foldover 4, a main support member 5, a left vertical support member (formed by the left half of 1) and a right vertical support member (formed by the right half of 1), which define a slot therebetween. No distinction is seen between the claimed holder and that disclosed in Vanish as a result of the claimed intended use to hold wire ties, rebar ties (cl. 2), double loop rebar ties (cl. 3), at least approximately 75 wire ties (cl. 10) or wire ties of 6 to 12 inches in length (cl. 11), i.e. the holder of Vanish is considered capable of holding wire ties disposed in a bundle with the enlarged portions above and below the spring and the middle portions squeezed between the left and right sides or members.

7. Claims 1-3, 6, 8, 11, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Banks. Banks discloses a holding device including a loop foldover (back portion 2), a main support member (front portion 2), a left vertical support member 5 and a right vertical support member 5, which define a slot therebetween. No distinction is seen between the claimed holder and that disclosed in Banks as a result of the claimed intended use to hold wire ties, rebar ties (cl. 2), double loop rebar ties (cl. 3) or wire ties of 6 to 12 inches in length (cl. 11), i.e. the holder of Banks is considered capable of holding wire ties disposed in the same manner as the rod bar 6 shown in Banks.

8. Claims 1-3, 5, 6, 8, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Dancyger. Dancyger discloses a holding device including a loop foldover 14, a main support member (rear 12), a left vertical support member (formed by the left side of the pockets) and a right vertical support member (formed by the right side of the pockets, which define a slot therebetween (the space enclosed by the pockets). Dancyger also disclosed rivets 90 holding the

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left and right members or portions to the rear or main support member. No distinction is seen between the claimed holder and that disclosed in Dancyger as a result of the claimed intended use to hold wire ties, rebar ties (cl. 2), double loop rebar ties (cl. 3), at least approximately 75 wire ties (cl. 10) or wire ties of 6 to 12 inches in length (cl. 11), i.e. the holder of Banks is considered capable of holding wire ties of like size to the holder and in any quantity pursuant to the relative sizes of the wire ties and the compartments.

9. Claims 1-3, 6, 10, 11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by LaRocco. LaRocco discloses a holding device including a loop foldover 19, 20, a main support member 23, a left vertical support member (formed by the left half of box 16) and a right vertical support member (formed by the right half of box 16), which define a slot therebetween. No distinction is seen between the claimed holder and that disclosed in LaRocco as a result of the claimed intended use to hold wire ties, rebar ties (cl. 2), double loop rebar ties (cl. 3), at least approximately 75 wire ties (cl. 10) or wire ties of 6 to 12 inches in length (cl. 11), i.e. the holder of LaRocco is considered capable of holding wire ties of like size to the holder and in any quantity pursuant to the relative sizes of the wire ties and the holder. With respect to claim 16, note is made that each half of the box is "L" shaped as claimed.

10. Claims 1-3, 6, 10, 11, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Evans et al. Evans et al discloses a holding device including a loop foldover 40, a main support member 14, a left vertical support member (formed by the left half of the container) and a right vertical support member (formed by the right half of the container), which define a slot therebetween. No distinction is seen between the claimed holder and that disclosed in Evans et al as a result of the claimed intended use to hold wire ties, rebar ties (cl. 2), double loop rebar ties

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(cl. 3), at least approximately 75 wire ties (cl. 10) or wire ties of 6 to 12 inches in length (cl. 11), i.e. the holder of Evans et al is considered capable of holding wire ties of like size to the holder and in any quantity pursuant to the relative sizes of the wire ties and holder. With respect to claim 14, note is made of the reinforcing pieces 68 in Evans et al.

11. Claims 1-3, 6, 10, 11, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Danielson. Danielson discloses a holding device including a loop foldover 26, a main support member 11, a left vertical support member (formed by the left half of the container) and a right vertical support member (formed by the right half of the container), which define a slot therebetween. No distinction is seen between the claimed holder and that disclosed in Danielson as a result of the claimed intended use to hold wire ties, rebar ties (cl. 2), double loop rebar ties (cl. 3), at least approximately 75 wire ties (cl. 10) or wire ties of 6 to 12 inches in length (cl. 11), i.e. the holder of Danielson is considered capable of holding wire ties of like size to the holder and in any quantity pursuant to the relative sizes of the wire ties and holder. With respect to claim 14, the additional material at 21 is considered to be a stiffening material and to provide additional structural support insofar as claimed.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Benward, Dancyger, LaRocco, Banks, Vanish or Evans et al, each in view of either Childers or



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Zorich et al. Each of Benward, Dancyger, LaRocco, Banks, Vanish and Evans et al discloses all structure of the claimed holder except text, graphics, designs, colors and corporate logos on the holder. Each of Childers and Zorich et al teaches that it is known to form logos on a holders. It would have been obvious to make the holder in any one of Benward, Dancyger, LaRocco, Banks, Vanish or Evans et al with logos as taught by either Childers or Zorich et al to enhance the advertising of the holder and corporate sponsors. Official notice is taken that logos are commonly provided in text, graphics, designs and colors to enhance the advertising aspect of the logos. It would have been obvious to make the logos in modified Benward, Dancyger, LaRocco, Banks, Vanish or Evans et al as text, graphics, designs and colors in view of the well known use of such logos.

14. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benward, Dancyger, LaRocco or Evans et al. Each of Benward, Dancyger, LaRocco, and Evans et al discloses all structure of the claimed holder except formation of the left and right support members approximately 4 and 7/8 inches apart (cl. 7) or approximately 8 inches in height (cl. 9). It would have been obvious to make the space between the support members in any one of Benward, Dancyger, LaRocco or Evans et al approximately 4 and 7/8 inches apart as a mere selection of size relative to the size of the article or articles to be held. The sizing of a container or holder to the size of a known content is within the level of skill in this art. It would have been obvious to make the height of the holder in any one of Benward, Dancyger, LaRocco or Evans et al approximately 8 inches as a mere selection of size relative to the size of the article or articles to be held. The sizing of a container or holder to the size of a known content is within the level of skill in this art.



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15. Claims 7, 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanish. Vanish discloses all structure of the claimed holder except formation of the left and right support members approximately 4 and 7/8 inches apart (cl. 7), approximately 8 inches in height (cl. 9) or forming the slots each approximately 1/8 inch in width (cl. 15). It would have been obvious to make the space between the support members approximately 4 and 7/8 inches apart or the height of the left and right support members approximately 8 inches or the width of the slots each approximately 1/8 inch in Vanish as a mere selection of size relative to the size of the article or articles to be held. The sizing of a container or holder to the size of a known content is within the level of skill in this art.

16. Claims 7, 9, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banks. Banks discloses all structure of the claimed holder except formation of the left and right support members approximately 4 and 7/8 inches apart (cl. 7), approximately 8 inches in height (cl. 9), forming the slots each approximately 1/8 inch in width (cl. 15) or forming the single rod with diameter approximately 1/4 inch. It would have been obvious to make the space between the support members approximately 4 and 7/8 inches apart or the height of the left and right support members approximately 8 inches or the width of the slots each approximately 1/8 inch or the diameter of the rod approximately 1/4 inch in Banks as a mere selection of size relative to the size of the article or articles to be held. The sizing of a container or holder to the size of a known content is within the level of skill in this art.

17. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Banks or Benward, each in view of Smith. Each of Banks and Benward discloses all structure of the claimed holder except formation of the holder from steel. Smith teaches that it is known to make

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a metal holder from steel. It would have been obvious to make the holder in either Banks or Benward from steel as taught by Smith to acquire the well known advantages of steel over other types of metals, i.e. strength, ready availability, etc. Steel is a notoriously well known and used material for forming containers and holders.

18. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Banks or Benward, each in view of either Hopkins et al or Musarella et al. Each of Banks and Benward discloses all structure of the claimed holder except formation of the holder from aluminum. Each of Hopkins et al and Musarella et al teaches that it is known to make a metal holder from aluminum. It would have been obvious to make the holder in either Banks or Benward from aluminum as taught by either Hopkins et al or Musarella et al to acquire the well known advantages of aluminum over other types of metals, i.e. light weight, ready availability, etc. Aluminum is a well known and used material for forming containers and holders.

### ***Conclusion***

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

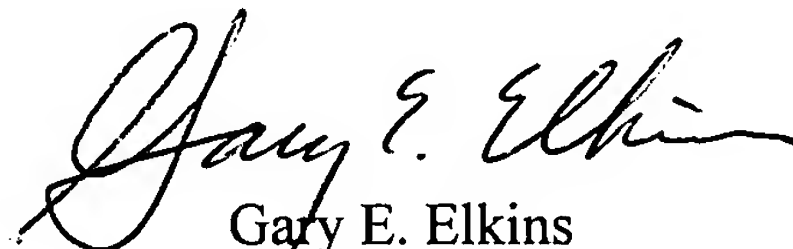
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Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.



Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
06 September 2005